

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

DEC 20 2007

COURT OF APPEALS  
DIVISION TWO

ANGELINA M.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY and  
ENEDINA P.,

Appellees.

2 CA-JV 2007-0043  
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication  
Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16066800

Honorable Suzanna S. Cuneo, Judge

AFFIRMED

Linda R. Herzog

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By William G. Hornung

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Angelina M. challenges the juvenile court's order terminating her parental rights to her daughter Enedina P. based on Angelina's incarceration for a felony conviction and her history of chronic drug abuse. *See* A.R.S. § 8-533(B)(3), (4). Angelina argues the evidence was insufficient to support either the termination of her rights on these grounds or the juvenile court's determination that severance was in Enedina's best interests. We affirm.

### **Facts and Procedural Background**

¶2 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Enedina was born in a hotel room in May 2006 with cocaine in her system. The Arizona Department of Economic Security (ADES) removed her from Angelina's care at the hospital two days later. ADES filed a dependency petition alleging that both Enedina and Angelina had tested positive for cocaine and Angelina had admitted to a hospital social worker that she used cocaine daily.

¶3 Approximately one week later, Angelina was arrested. Except for a period of time when Angelina absconded from a work furlough program, she was incarcerated throughout the dependency and severance proceedings. Enedina was adjudicated dependent in July 2006. In November, Angelina was sentenced to concurrent prison terms of 2.5 and 3.5 years for her convictions on two counts of burglary. She was also convicted of escape and sentenced to a consecutive term of 1.5 years' imprisonment. Her expected release date is in December 2009.

¶4 In January 2007, the juvenile court approved a case plan of severance and adoption for Enedina. ADES filed a motion to terminate Angelina's parental rights on grounds of mental illness or chronic substance abuse, the length of incarceration and nature of Angelina's convictions, and the length of time Enedina had been in a court-ordered, out-of-home placement. *See* A.R.S. §§ 8-533(B)(3), (B)(4), (B)(8)(a). Following a contested severance hearing, the juvenile court granted the motion, finding clear and convincing evidence the first two statutory grounds for termination existed and that terminating Angelina's rights was in Enedina's best interests. Angelina challenges the sufficiency of the evidence.

### **Discussion**

¶5 A trial court may terminate a parent's parental rights if it finds by clear and convincing evidence any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). We view the evidence in the light most favorable to upholding the juvenile court's factual findings. *See Michael J.*, 196 Ariz. 246, ¶ 20, 995 P.2d at 686. We do not reweigh the evidence but determine only whether any reasonable evidence supports the court's findings. *Id.* And we will not disturb a juvenile court's order terminating a parent's rights

unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶6 “Evidence sufficient to justify the termination of the parent-child relationship” includes evidence “[t]hat the parent is deprived of civil liberties due to the conviction of a felony . . . if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.” § 8-533(B)(4). There is “no ‘bright line’ definition of when a sentence is sufficiently long to deprive a child of a normal home for a period of years.” *Michael J.*, 196 Ariz. 246, ¶ 29, 955 P.2d at 687. The juvenile court must

consider all relevant factors, including, but not limited to: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child’s age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

*Id.*

¶7 In this case, the juvenile court found Angelina had never established a relationship with Enedina, thus there was nothing to be preserved or nurtured. Enedina’s father’s parental rights were severed at the same hearing on grounds of his incarceration, chronic substance abuse, and the length of time Enedina had been in a court-ordered placement. Given Enedina’s age when she was taken into custody and the fact that she will be over three years old on Angelina’s expected release date, the juvenile court’s

determination that she would be deprived of a normal home for a period of years is not clearly erroneous. *See* § 8-533(B)(4). Because the record supports this ground for severance, we need not address Angelina’s arguments regarding the sufficiency of the evidence to support the juvenile court’s determination under § 8-533(B)(3). *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687.

¶8 The juvenile court’s finding that Enedina’s best interests would be served by terminating Angelina’s parental rights is also supported by the evidence. “To establish that terminating [Angelina’s] parental rights was in [Enedina’s] best interests, ADES was required to show that [Enedina] would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004), *citing Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 73 (App. 1997). “The existence of a current adoptive plan is one well-recognized example” of a benefit. *Id.*

¶9 Enedina was thriving in the same foster home in which she had been placed soon after birth. Her foster parents had been taking good care of her, as Angelina acknowledged at the severance hearing, and they were willing and had been approved to adopt her. Although ADES only had the burden of establishing these facts by a preponderance of the evidence, the juvenile court found ADES had proven by clear and convincing evidence that terminating Angelina’s rights was in Enedina’s best interests.

¶10 The trial court's order severing Angelina's parental rights to Enedina is affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge